

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

**WILEMON FOUNDATION, INC. and
R.J. WILEMON, LLC**

PLAINTIFFS

VS.

CIVIL ACTION NO. 1:19-CV-136-GHD-DAS

DANNY WAYNE WILEMON

DEFENDANTS

VS.

SHONDA WILEMON SHARPE; et al.

CROSS-DEFENDANTS

OPINION GRANTING PUTATIVE CROSS-DEFENDANTS' MOTIONS TO DISMISS

Presently before the Court are the motions [21, 25, 28] of the putative Cross-Defendants Phelps Dunbar, LLP, Shonda Wilemon Sharpe, and Thomas W. Sharpe to dismiss the Defendant Danny Wayne Wilemon's putative cross-claims. Upon due consideration, the Court finds that the motions should be granted and the Defendant's putative cross-claims [11, 12] dismissed without prejudice.

Factual Background

The underlying Complaint [1] in this action was filed on July 19, 2019. The Defendant filed his Answer on September 11, 2019, and included a counterclaim against the Plaintiffs [10]. On September 20, 2019, the Defendant then filed a putative cross-claim [11, 12] against Phelps Dunbar, LLP, Shonda Wilemon Sharpe, and Thomas W. Sharpe, all three of whom have moved to dismiss.

Analysis

a. Rule 13 Crossclaims

Federal Rule of Civil Procedure 13(g) provides that "[a] pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of a transaction or occurrence that

is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject of the original action.” Fed. R. Civ. P. 13(g). It is axiomatic that a crossclaim can only be asserted against a coparty, and that coparty must be a party to the underlying action at the time the crossclaim is filed. *Ambraco Inc. v. Bossclip BV*, 570 F.3d 233, 242 (5th Cir. 2009). A putative crossclaim that is filed against a non-party to the action must be dismissed. *Id.*; *Crews & Assocs. V. City of Port Gibson*, No. 5:14CV37-DCB-MTP, 2014 WL 12641994, at *2 (S.D. Miss. Oct. 14, 2014). Here, the putative cross-defendants are non-parties to this action; accordingly, the Defendant’s crossclaim against them shall be dismissed.

b. Rule 14 Third-Party Claims

Under Rule 14 of the Federal Rules of Civil Procedure, a defending party may, as a third-party plaintiff, serve a summons and complaint on a non-party, but only if that non-party “is or may be liable to [the defending party] for all or party of the claim against it.” Fed. R. Civ. P. 14(a)(1). As the Fifth Circuit has long made clear, however, such a third-party complaint is legally sufficient only if the putative third-party defendant may be liable to the defendant/third-party plaintiff for part or all of the underlying original plaintiff’s recovery against that defendant/third-party plaintiff. See, e.g., *United States v. Joe Grasso & Son, Inc.*, 380 F.2d 749 (5th Cir. 1967) (holding that a third-party complaint is appropriate “only in cases where the third-party’s liability was in some way derivative of the outcome of the main claim.”); *Crews & Assocs.*, 2014 WL 12641994, at *3 (such an action “is proper only where the third-party defendant’s liability is dependent on the outcome of the main action, such as a claim for contribution.”).

Should the Defendant wish to pursue a third-party claim against one or more of three putative cross-defendants, Rule 14 provides the roadmap for third-party practice. The counter-claims that the Defendant asserted against the original Plaintiffs, Wilemon Foundation, Inc. and

R.J. Wilemon, LLC, in his Answer [10] to the original Complaint, remain as viable pending counter-claims as pled.

Conclusion

As outlined herein, the Court finds that the motions of the putative cross-defendants Phelps Dunbar, LLP, Shonda Wilemon Sharpe, and Thomas W. Sharpe to dismiss the Defendant Danny Wayne Wilemon's cross-claims should be granted, and that the Defendant Danny Wayne Wilemon's crossclaims against these three non-parties should be dismissed without prejudice.

An order in accordance with this opinion shall issue this day.

THIS, the 27th day of January, 2020.



SENIOR U.S. DISTRICT JUDGE